

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FRANCISCO ESTRADA	§	
VS.	§	CIVIL ACTION NO. 1:10CV332
JODY UPTON, ET AL	§	

MEMORANDUM ORDER PARTIALLY ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Petitioner, Francisco Estrada, an inmate confined at the Beaumont Medium Federal Correctional Institution, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends this habeas action be dismissed without prejudice as petitioner's claims implicate the conditions of his confinement.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. No objections to the Report and Recommendation have been filed by either party. Petitioner, however, did file what the court construes as a Motion to Dismiss pursuant to FED. R. CIV. P. 41(a) as no answer has been filed by defendants in this case. After careful consideration, the court partially adopts the Report and Recommendation of United States Magistrate Judge and grants petitioner's Motion to Dismiss pursuant to FED. R. CIV. P. 41(a).

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **PARTIALLY ADOPTED** to the extent it recommends dismissal. In addition, petitioner's Motion to Dismiss is **GRANTED**. A final

judgment will be entered in this case in accordance with the magistrate judge's recommendations and this memorandum order.

So **ORDERED** and **SIGNED** this **28** day of **September, 2010**.

A handwritten signature in black ink, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, United States District Judge